

**(1992) 11 BOM CK 0109**

**Bombay High Court**

**Case No:** Income-tax Reference No. 266 of 1977

Commissioner of Income Tax

APPELLANT

Vs

Anil Hardboards Ltd.

RESPONDENT

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**Date of Decision:** Nov. 3, 1992

**Acts Referred:**

- Income Tax Act, 1961 - Section 80J, 84

**Citation:** (1993) 114 CTR 230 : (1994) 207 ITR 802 : (1993) 68 TAXMAN 488

**Hon'ble Judges:** Sujata V. Manohar, J; B.N. Srikrishna, J

**Bench:** Division Bench

**Advocate:** Dr. V. Balasubramanian, for the Appellant; A.V. Sonde, for the Respondent

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### **Judgement**

B.N. Srikrishna, J.

This reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), made at the instance of the Revenue, refers the following two question of law for the opinion of this court :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal rightly held for the three years that the figure of advance shown to have been made by the hardboard unit to the insulation board unit need not be deducted as a liability while computing the capital employed by the new industrial undertaking manufacturing insulation board ?

(2) If the answer to question No. 1 is in the negative, then, should the deduction required to be made for liability be worked out on the basis adopted by the Income Tax Officer or by the Appellate Assistant Commissioner or by the assessee in its second alternative plea, which is dealt with in paragraph 13 of the Tribunals orde ?"

2. The concerned assessment year 1964-65, 1965-66 and 1966-67. The relevant previous years are the year ending on March 31, 1964 and 1965.

3. The assessee is a limited company incorporated under the provisions of the Companies Act. The assessee was carrying on the business of manufacturing hardboards and insulation boards. The assessee set up its hardboard factory first and the insulation board factory was set up subsequently. There is no dispute between the parties that the two units manufacturing hardboards and insulation boards were to be treated as two separate industrial undertakings for the purpose of claiming relief envisaged u/s 84 of the Act (wrongly referred to as section 80J, throughout the statement of case). The hardboard unit started operation in the assessment year 1959-60 and earned profits from the very commencement. Relief/deduction u/s 84 of the Act and under the corresponding section 15C of the Indian Income Tax Act, 1922, was available for a period of five years. The hardboard unit was granted relief u/s 15C of the 1922 Act for the assessment year 1959-60 and u/s 84 of the 1961 Act for the assessment years 1961-62 to 1963-64. The construction and installation of the insulation board unit was started during the assessment year 1961-62, but its manufacturing activity commenced only during the previous year relevant to the assessment year 1962-63. The insulation board unit made losses during the assessment year 1962-63 and 1963-64 and hence there was no question of the said unit claiming any relief u/s 84 for the said years, although both the units were operating during the assessment years 1962-63 and 1963-64.

4. The assessee-company has maintained published consolidated balance sheets and profit and loss accounts for both the units as required under the Companies Act. However, in order, perhaps, to have readily available accounts of each unit separately, the assessee-company maintained account books and balance-sheets and profit and loss accounts, though unpublished for each unit separately. The books of account of the insulation board unit were opened for the first time in 1961-62. When the construction of the Insulation board unit was taken up during the assessment year 1961-62, the assessee-company made available funds to the said unit and showed the monies advanced to the said unit as an advance in the account books of the hardboard unit. In the books of account of the hardboard unit, the monies advanced were shown on the assets side and correspondingly they were shown on the liabilities side in the books of the insulation board unit. Since the published accounts were maintained on a common basis, there were no such cross-entries shown in the published balance-sheet and profit and loss accounts. Apart from these inter-unit advances in both sets of accounts, there were certain sundry creditors pertaining to the respective units. The parties are agreed that the sundry creditors shown in the books of each unit pertained to the respective unit and that the balance in those accounts had to be deducted for arriving at the capital employed in each of the units. The figures of the amounts shown in the account books of the assessee-company as due from the insulation board unit for the three assessment years in question as well as for the three preceding years (1961-62 to 1966-67) are as under :

5. The figures of share capital, reserves and surplus and of the advances made by the hardboard unit to the insulation unit as appearing in the books of account of the hardboard unit for the assessment year 1964-65, 1965-66 and 1966-67 were as under :

6. While claiming relief u/s 84 of the Act in the assessment year 1962-63 and 1963-64, in respect of the newly set up industrial undertaking of the hardboard division, the assessee claims that the dues to sundry creditors appearing in the books of account of the hardboard units division, the assessee claimed that the dues to sundry creditors appearing in the books of account of the hardboard unit division should not be fully deducted from the value of the total assets of the hardboard division, the assessee claimed that the dues to sundry creditors appearing in the books of account of the hardboard unit division should not be full deducted from the value of the total assets of the hardboard division because a part of the monies received from the sundry creditors had been diverted to the insulation board unit by advancing funds to the latter for construction of the factory. The stand was that these monies had been raised by the hardboard unit from outside parties specifically for the purpose of construction and running of the insulation board unit. This stand of the assessee for claim Officer and, while computing the capital base, for the purpose of claiming the relief u/s 84 of the Act was accepted by the Income Tax Officer and, while computing the capital base, for the purpose of claiming the relief u/s 84 of the Act, he ignored these amounts while deducting the outstanding liability under rule 19.

7. The hardboard unit ceased to get the benefit of the deduction u/s 84 of the Act at the expiry of five assessment years from the year of manufacture, i.e., at the end of the assessment year 1963-64. For the assessment year 1964-65, and thereafter for the next two years, the assessee claimed relief u/s 84 of the Act (though erroneously mentioned division. While doing so, the assessee took up the stand that, while working out the capital employed in the insulation board unit, the advance made by the hardboard division to the insulation board division and shown as due from it, should not be deducted from the value of assets because that advance should be deemed to have come out of the share capital and reserve of the company and not from the amounts realised from the sundry creditors. The Income Tax Officer rejected this plea of the assessee and held that the funds made available to the insulation board unit by the hardboard unit were co-related to secure loans and sundry creditors and, therefore, those funds must be regarded as debts and liabilities deductible from the value of assets for working out the capital employed in the insulation board unit. He calculated the liability for each year by taking into account the opening balance and the closing balance in the advance account and by averaging the two amounts of capital as calculated, he granted relief as permissible u/s 84 of the Act.

8. The assessee, being aggrieved, appealed against the assessment orders. The Appellate Assistant Commissioner gave partial relief by taking the view that since both units belong to the assessee and the share capital of the assessee-company was employed in both the units, the capital should be allocated to each unit in the ratio of the fixed assets of each division. With regard to reserves, he thought that such apportionment was not necessary because the reserves pertaining to each unit were separately shown in the books of account of the concerned unit. By granting such partial relief, the Appellate Assistant Commissioner reduced the deduction for debts and liabilities to Rs. 3.10 lakhs, Rs. 7.28 lakhs and Rs. 13.02 lakhs for the assessment year 1964-65, 1965-66 and 1966-67, respectively.

9. On further appeal to the Income Tax Appellate Tribunal, the Tribunal took the view that from a careful reading of the balance-sheet and profit and loss accounts of the company, in conjunction with the figures for the two units which were separately available, it could be seen that the assessee was entitled to succeed as it was not possible to co-relate the liabilities to the assets for the purpose of reading a balance-sheet and that it would not be correct to co-relate absolutely any one item on the liabilities side like share capital and reserves to any particular asset like fixed assets or current assets.

10. Before the Tribunal, the Revenue contended that the assessee must be barred by the Principle of estoppel from changing its stand with the regard to the character of the advance made by the hardboard unit to the insulation board unit and shown in the books of insulation board units as amount due. The Revenue pointed out that for the purpose of claiming relief u/s 84 of the Act, during the assessment years 1962-63 and 1963-64, the assessee had taken up the stand that the advances, although shown in the books of accounts of the hardboard unit as advances made to the insulation board unit, ought not to be deducted for the reason that these were really advances taken from outside parties for the benefit of the insulation board unit. Since this stand of the assessee had been accepted and relief u/s 84 of the Act had, accordingly, been calculated and held admissible to the assessee, the Reserve contended that the assessee ought not to be permitted to change its stand with regard to the said advance during the assessment years in question. This plea of the Revenue was rejected by the Tribunal, somewhat brusquely, by expressing its disagreement without giving any reasons.

11. The Tribunal accepted the contention of the assessee that, despite its previous stand, it was open to the assessee to ascribed a different character to the outstanding advances from the hardboard unit to the insulation board unit and shown in the books of account of both. The Tribunal took the view that the advances made by the hardboard unit to the insulation board division were more than fully covered by the share capital and reserves of the head office and, allowing the plea of the assessee, directed the Income Tax Officer to ignore altogether, for the purpose of working out the liabilities, the said credit balance in the head office

account for all the three concerned assessment years. The questions of law, as already indicated, have been referred for the opinion of this court at the instance of the Revenue.

12. We are unable to see how the Tribunal could have summarily dismissed the plea of estoppel raised by the Revenue. The assessee was claiming a specific relief of deduction provided u/s 84 of the Act. Prima facie, therefore, the burden lay on the assessee to produce cogent material in support of its claim. The facts before the Tribunal showed that during the assessment proceedings pertaining to the assessment year 1962-63 and 1963-64, the assessee had taken a categorical stand that the amounts shown in the books of account of the hardboard unit as due and payable by the insulation board unit ought not to be deducted while computing the capital employed in the hardboard unit for the purpose of relief u/s 84 of the Act for the reason that these advances really represented monies borrowed from outsiders for the benefit of the insulation board unit and invested therein straightway. This plea and stand was accepted by the Income Tax Officer and, accordingly, the assessee got the benefit of a larger relief without deducting these amounts while calculating the capital invested in the hardboard unit for the purpose of granting relief u/s 84 of the Act. In the absence of any other material placed before the authorities or the Tribunal, in our view, the Tribunal ought to have proceeded on the footing that the amounts shown as advances received from the hardboard unit reflected in the books of account of the insulation board unit during the relevant assessment years maintained the same character attributed to them initially by the assessee during the assessment proceedings for the assessment year 1962-63 and 1963-64. By making a representation as to the factual situation, the assessee had obtained certain relief, which it was not otherwise entitled to; the assessee was, hence, estopped from denying the said factual situation for claiming benefit u/s 84 of the Act for the subsequent assessment years, unless the assessee placed before the authorities and/or the Tribunal cogent material to show that the situation had drastically changed. We are, therefore, of the view that the Tribunal did not properly consider the plea of estoppel made by the Revenue which ought to have been given proper weight. In fact, there are hardly any reasons contained in the Tribunal's order as to why the plea of estoppel would not bar the assessee's claim.

13. Apart from the bar of estoppel, we are also of the view that the facts on record do not warrant that a drastic change in the character be ascribed to the advances which were outstanding from the insulation board unit to the hardboard unit. The figures on record show that as on March 31, 1961, the amounts stood at a figure of Rs. 40.11 lakhs. In the subsequent three years as on March 31, the amounts due from the hardboard division towards the insulation board division were Rs. 27.96 lakhs, Rs. 24.40 lakhs and Rs. 24.48 lakhs, respectively. In the two years in question, as on March 31, 1964, these amounts stood at Rs. 24,48,303 and on March 31, 1966, this figure stood at Rs. 36,25,025.

14. Mr. Sonde, the learned advocate for the respondent, attempted to contend that although the original figure which stood at Rs. 40.11 lakhs was claimed to have been obtained from other parties, meant only for the utilisation by the insulation board unit as on March 31, 1961, there was no material on record, nor any finding, as to whether the amounts shown as due from the hardboard division towards the insulation board division retained the same character in the subsequent assessment year also. In the absence of a clear cut finding, the learned advocate submits that it is not permissible to treat them as loans from other parties and/or to deduct the said amounts for the purpose of calculating the capital for relief u/s 84 of the Act. In our view, the position is the other way round. The facts contained in the statement of case along with its annexures only show that the figure of advances had reduced from the original figure of Rs. 40.11 lakhs to the smaller figure indicated during the relevant years. Coupled with the fact that, at least in the two assessment year 1962-63 and 1963-64, the assessee had claimed that these loans were obtained from outside parties and utilised for the business of the insulation board unit, if at all the assessee desired to get the benefit of the relief u/s 84 of the Act, he should have placed material from which the changed character of these advances during the subsequent years could have been discerned. In the absence of such material being placed on record, we are of the view that the Income Tax Officer was justified in treating these advances as bearing the same character as in the assessment year 1962-63 and 1963-64. Consequently, the Income Tax Officer was justified in deducting these amounts which were shown as debts due to outside parties while computing the capital of the insulation board unit. In our view, the approach of the Appellate Assistant Commissioner in making an apportionment of the aforesaid amount in proportion to the fixed assets was also not justified. Inasmuch as the assessee had kept separate books of account with regard to the fixed assets, reserves and sundry creditors and other particulars, there was not warrant for this estimation on the part of the Appellate Assistant Commissioner. So far as the Appellate Tribunal was concerned, we are of the view that the view taken by the Appellate Tribunal was clearly wrong as it was opposed to the entire body of evidence on record. In the absence of any cogent material on record, neither of the two appellate authorities below should have interfered with the finding recorded by the Income Tax Officer on the issue.

15. In the circumstances, the questions referred to us for opinion are answered as below :

Question No. 1 : In the facts and circumstances of the case, the Tribunal was not right in holding that the figures of advances shown to have been made by the hardboard unit to the insulation board unit need not be deducted as liability while computing the capital employed by the new industrial undertaking manufacturing insulation boards.

Question No. 2 : In our view the entire amount of advances made by the hardboard unit to the insulation board unit in the relevant assessment years is deductible for the purpose of calculating the capital u/s 84 of the Act since there has been no change in the character of the advances, namely, that they represented loans taken from the outside parties.

The questions are, accordingly, answered as above.

16. In our view, the approach of the Income Tax Officer is the correct approach. However, while giving effect to this order, the authorities shall examine as to whether any amount of advances in excess of the sum of Rs. 24,40,406 was also by way of loan from outside parties and accordingly decide the issue of granting relief u/s 84 of the Act.

17. In the circumstances of the case, there will be no order as to costs.